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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,240	04/01/2004	Michael Spolidoro	MED-0016	3052
33941	7590	01/24/2006	EXAMINER	
MONTE & MCGRAW, PC			PICKETT, JOHN G	
4092 SKIPPACK PIKE			ART UNIT	
P.O. BOX 650			PAPER NUMBER	
SKIPPACK, PA 19474			3728	

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/817,240

Applicant(s)

SPOLIDORO, MICHAEL

Examiner

Gregory Pickett

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action acknowledges the applicant's amendments submitted 17 October 2005 and 7 November 2005. Claims 16-22 are pending in the application. Claims 1-15 were canceled in the amendment of 17 October 2005.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Priority

3. In resolving the question of priority the examiner looks to **MPEP § 201.03(VI)**. According to 35 U.S.C. 119(e), a non-provisional application filed under 35 USC 111(a) that is filed within twelve months of an earlier provisional application may claim benefits to the earlier filed provisional application so long as both applications have at least one inventor in common. An error in not naming or in naming a person as an inventor in a provisional application would not require correction under either 37 CFR 1.48(d) [to add an inventor] or 37 CFR 1.48(e) [to delete an inventor] in the provisional application so long as the non-provisional application naming the correct inventorship would contain an overlap of at least one inventor with the provisional application. The existence of an overlap would prevent the original inventorship from having any effect upon the ability of the provisional application to serve as a basis for a benefit claim.

No such overlap exists in the instant application.

If applicant chooses to correct the inventive entity of the provisional application to permit the provisional application to serve as the basis for a priority claim, a request under 37 CFR 1.48(d) and/or 37 CFR 1.48(e) may be filed with OIPE.

Until the inventorship of the provisional application is corrected to serve as a basis for a priority claim, the effective filing date of the instant application is the filing date of the non-provisional application, **01 April 2004**.

Claim Rejections - 35 USC § 102

4. Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Knapp [US 5,540,324; previously provided].

Claim 16: Knapp discloses a reclosable tray **10** with an upper portion **12**, a lower portion **14**, and cooperable locking sections **56 & 58**. Lower section **14** comprises a plurality of article receiving compartments **48/52/60** capable of receiving particular articles. Upper section **12** comprises a plurality of indentations **24/34/62** adapted to cooperate with the compartments **48/52/60** to secure articles in place. The lower portion has an interior sidewall **42**, and the upper portion **12** has an exterior sidewall **18** adapted to frictionally engage interior sidewall **42**.

Claim Rejections - 35 USC § 103

5. Claims 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knapp in view of Roberts [US 4,681,223; previously provided].

Claim 17: Knapp discloses a one-piece, integral tray with a hinge at a first major side of the upper and lower portions. Knapp discloses the claimed invention except that Knapp uses an internal snap instead of a locking section located on a major side opposite the hinge. Roberts shows that a locking section **16 & 18** located on a major side opposite the hinge was an equivalent structure known in the art. Therefore, because these two locking means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the tabs of Roberts for the snaps of Knapp. An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

Claim 18: Roberts discloses the locking sections **16 & 18** that are interlocking tabs.

Claim 20: Knapp-Roberts discloses the claimed invention except for the second locking sections on a minor side. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a second locking section on a minor side in order to further secure the tray from opening. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claim 21: Roberts discloses the locking sections **16 & 18** that are interlocking tabs.

6. Claims 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knapp-Roberts as applied to claims 17 and 21 above, and further in view of Vigue et al [US 5,036,980; hereinafter Vigue; previously provided].

Knapp-Roberts discloses the claimed invention except for the oblique interior portions of the tabs.

Vigue shows that oblique interior portions of locking tabs were functional and desirable in the art at the time the invention was made [see Figure 8]. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide oblique interior portions for the tabs of Knapp-Roberts because the applicant has not disclosed that the interior shape of the tabs provides an advantage, is used for any particular purpose, or solves any stated problem. One of ordinary skill in the art would have expected the invention to perform equally well with rounded or oblique interior portions since both function to flex and overlap to form an effective latching means.

Response to Arguments

7. Applicant's arguments with respect to claims 16-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

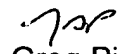
§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Greg Pickett
Examiner
18 January 2006



Mickey Yu
Supervisory Patent Examiner
Group 3700